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CMT  
laurate, PEG-4 dilaurate, or iodopropinyl butylcarbamate.--

### REMARKS

Claims 1-5, 7-12, 14 and 18-21 are in the application.

The disclosure was amended to incorporate some features spelled out in the original claims, that were objected to by the examiner as missing therefrom. No new matter was added.

The deleted claims were replaced by new claims that are respectfully submitted not to contain terminology objected thereto by the examiner.

It is respectfully submitted that no objection is appropriate to the wording of claim 6 (deleted and replaced by claim 18), because it contains an unequivocal recitation of an alternative expression, and the examiner has not stated anything objectionable in the wording.

In claim 7 reference to the "boiling point" self evidently refers to the mixture that is heated and is referred in the claim as "said heating."

Original claim 13 did not contain the term "reduced" to which the examiner has objected. The only claim that contains that word is claim 9, but the examiner's objection could of course not have been made to the term of "reduced pressure" in claim 9, which is the recognized terminology for pressure that is less than atmospheric pressure (i.e. vacuum).

It is respectfully submitted that the objection to not specifying the boiling point of a liquid, is not well taken, because the boiling point of a liquid is what it is, and can be determined for any liquid by anyone, with any number of routine methods of temperature measurement.

There is no comma in claim 3, line 5 after "formulating."

The claims of the present invention relate to a process for preparing a whey containing premix for a cosmetic composition, by mixing whey powder with a liquid carrier, heating and then cooling the mixture, and adding a preservative and imidazolidinyl urea to the mixture.

Phillips et al. (US patent No. 5,580,491 relates to preparing foamable compositions. Particularly, Example 5 that was referred to by the examiner, prepares a foamable composition by mixing a microfiltered whey protein solution with ethanol to a specific pH and alcohol content, and mineral oil. The composition is then inserted into a blender and foamed into a foam that can be applied to the skin.

The present invention differs from Phillips in a number of respects:

- (i) the present invention, as claimed, does not employ a microfiltered whey solution, but solid whey powder;
- (ii) the present invention, as claimed, does not contain alcohol;
- (iii) the present invention, as claimed, does not include ethanol;
- (iv) the present invention, as claimed, does not include a mineral or any other kind of oil; and
- (v) the present invention is not a foamable composition, but a premix.

Therefore, the present invention has absolutely nothing in common with Phillips, except for the fact that what is made in both contains different forms of some whey. Not even by the extremely distorted misinterpretation of the Office letter could a microfiltered whey **solution** be considered to be whey powder. In fact, the reference states in col. 2, ls. 7 *et seq.* the whey solution is obtained by gel filtration of cheese whey, electrodialysis, or reverse osmosis. Once the primary reference fails, as here, to function as a proper reference, no combination with **any** secondary reference can make the rejection tenable.

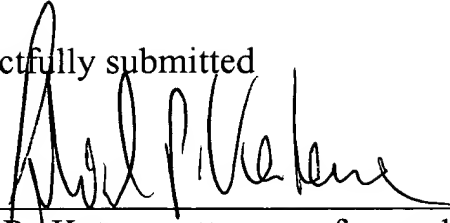
Furthermore, the Costa et al. and Boothe et al references which although deal generally with cosmetics, do not deal with any whey-containing cosmetics or anything else that would indicate any motivation that would warrant for any kind of combination with Phillips et al.

Although the abstract of the Japanese reference refers to a milk-based skin humectant, the milk is fermented with a lactobacillus (which is a known agent for producing yoghurt), which product is then heated under reduced pressure to deodorize it. It also has nothing in common with the premix prepared from dry whey powder in accordance with the present invention, and the examiner has failed to present any motivation for the attempted combination of these dissimilar references.

In view of the foregoing, reconsideration of the outstanding rejections, and the allowance of claims 1-5, 7-12, 14 and 18-21 is respectfully urged.

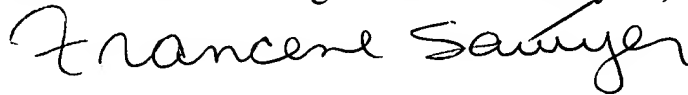
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Respectfully submitted

A handwritten signature in black ink, appearing to read 'Gabriel P. Katona', written over a horizontal line.

Gabriel P. Katona, attorney of record  
Customer No. 23622

It is hereby certified that this is being mailed on January 22, 2002.

A handwritten signature in black ink, appearing to read 'Francene Sawyer', written below the certification text.

### Disclosure amendment comparisons

In preparing the premix suitably dry whey powder is used. This is simply produced by the drying of fresh, natural whey, such as by spray drying. The dry whey powder residue is about 6.5% wt. of the starting liquid whey. The premix is made by mixing the powder with a liquid carrier, such as water, suitably deionized or distilled water, or even liquid whey. The mixture is heated, suitably to a temperature between about 50°C and below its boiling point, suitably for a period of from about 20 minutes to about an hour. The heating can be suitably carried out at slightly reduced pressure, in one or more stages. The heated mixture is subsequently cooled [**in one or two stages**] (or allowed to cool) to ambient temperature. Any reference to “cooling” is intended to cover both cooling with the aid of external cooling means, and merely allowing to cool to ambient by exposure to the ambient.

An essential ingredient of the premix is a preservative, suitably an antimicrobial paraben preservative such as those sold under the trade names Phenova W90, Phenoben W90, and Phenonip, by Georges Walther AG, or a mixture of phenoxyethanol, with one or more of methyl-, ~~{chyl-}~~ [**ethyl-**], propyl-, and butylparaben. Other cosmetic preservatives such as iodopropinyl butylcarbamate, PEG-4 laurate, PEG-4 dilaurate can also be used. The

concentration of the preservative is suitably from about 0.1% to about 0.1% wt.

based on the formulation. Imidazolidinyl urea, suitably at a concentration of from

about 0.1% to about 0.7% wt. based on the total formulation is also an essential

ingredient along with the preservative. **[Suitably the preservative and the**

**imidazolidinyl urea are added after cooling, or if cooling is carried out in two**

**stages then after the first cooling stage, or the preservative is added before**

**heating and the imidazolidinyl urea is added after the first cooling stage.]**